IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2516 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Petitioner(s)

Versus

JAMALMIYA IBRAHIMMIYA SAIYAD - Respondent(s)

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Appearance :

MR KL PANDYA AGP For Petitioner No(s).: 1,2.

MR NK MAJMUDAR for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 27/06/2005

ORAL JUDGMENT

1.0 The petitioners have challenged the order dated

11.12.1998 passed by the learned Presiding Officer of the Labour Court, Rajkot, in Reference (LCR) No.553 of 1985, whereby the said reference was allowed.

2.0 The respondent herein was working as a Peon with the petitioner State. On 22.04.1984, the respondent was dismissed from the service. Feeling aggrieved by the said action, the respondent raised an industrial dispute which was ultimately referred to the Labour Court, Rajkot for adjudication. The said reference was numbered as Reference (LCR) No.553 of 1985.

2.1 The Labour Court, Rajkot by order dated 11.12.1998 allowed the said reference preferred by the respondent. Hence, this petition.

3.0 Mr. K L Pandya learned AGP has contended that while awarding back wages to the respondent, the Labour Court has not considered the contentions raised by the petitioners and has not considered the fact that the respondent was employed as a daily wager only, and therefore, the Labour Court ought not to have granted reinstatement to the respondent with continuity of service and back wages.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. While admitting the matter on 09.04.1999, this Court has passed the following order;

> “Rule. Notice as to interim relief returnable on 18.06.1999. Prima facie, it does appear that the petitioner no.2 cannot be said to be an “industry”

within the meaning of S.2(j) of the Industrial Disputes Act, 1947. Therefore, there should be ad-interim stay against implementation and execution of the impugned order dated 11.12.1999.”

5.0 However, in view of the Full Bench decision of this Court in the case of **Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat reported in 2004 (2) G.L.H. 302**, the 'R & B Department' of the State is held to be an “industry” within the meaning of S.2(j) of the Industrial Disputes Act, 1947.

6.0 In that view of the matter, the impugned order of the Labour Court regarding reinstatement with continuity of service is required to be confirmed. However, so far as the direction as regards awarding back wages is concerned, it is required to be quashed since it is clear that the respondent was working on daily wages and not on permanent basis.

7.0 In above view of the matter, this petition is partly allowed. The impugned order dated 11.12.1998 passed by the learned Presiding Officer of the Labour Court, Rajkot, in Reference (LCR) No.553 of 1985, as regards directing the petitioner to reinstate the respondent with continuity in service is confirmed and the direction as regards granting back wages to the respondent is quashed and set aside. However, it is made clear that the petitioner shall be entitled for salary for the period from the date of the award to till date, i. e. from 11.12.1998 to till date. With the above directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order

as to costs.

(K. S. JHAVERI, J.)

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